

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN FRATUS,

1:10-cv-00740 MJS (HC)

Petitioner,

vs.

ORDER TRANSFERRING CASE TO THE  
UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF  
CALIFORNIA

ADAMS, Warden at Corcoran Prison,

Respondent.

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Petitioner, a state prisoner proceeding pro se, challenges a prison disciplinary action by filing this habeas corpus action pursuant to 28 U.S.C. § 2254.

Petitioner has not paid the \$5.00 filing fee or submitted an application to proceed in forma pauperis for this action.

The federal venue statute requires that a civil action, other than one based on diversity jurisdiction, be brought only in “(1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.” 28 U.S.C. § 1391(b).

In a habeas matter, venue is proper in either the district of conviction or the district of confinement. 28 U.S.C. § 2241(d). In this case, petitioner challenges the result of a prison

1 disciplinary proceeding, i.e., he attacks the execution of his sentence, not the conviction itself. In  
2 such case, the proper forum in which to seek review is the district of confinement. See Dunn v.  
3 Henman, 875 F.2d 244, 249 (9th Cir. 1989) (stating, in a 28 U.S.C. § 2241 action, that "[t]he proper  
4 forum to challenge the execution of a sentence is the district where the prisoner is confined.").  
5 Petitioner is confined in prison located in the Northern District of California. Therefore, his petition  
6 should have been filed in the United States District Court for the Northern District of California. In  
7 the interest of justice, a federal court may transfer a case filed in the wrong district to the correct  
8 district. See 28 U.S.C. § 1406(a); Starnes v. McGuire, 512 F.2d 918, 932 (D.C. Cir. 1974).

9 Accordingly, IT IS ORDERED that this matter be and hereby is transferred to the United  
10 States District Court for the Northern District of California.

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13 IT IS SO ORDERED.

14 **Dated:** May 11, 2010

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE